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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,086	12/11/2001	Jonathan J. Bernstein	112222.128	9491

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EXAMINER

ALANKO, ANITA KAREN

ART UNIT	PAPER NUMBER
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1765

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/015,086

Applicant(s)

BERNSTEIN ET AL.

Examiner

Anita K Alanko

Art Unit

1765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/16/04 amdt.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 22-24 and 30 is/are allowed.  
6) ☒ Claim(s) 1,3-11,25-27,29 and 31-36 is/are rejected.  
7) ☒ Claim(s) 12-21 and 28 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-11, 25-27, 29 and 31 are rejected under 35 U.S.C. 102(a) as being anticipated by Golecki et al (US 2001/0049193 A1).

Golecki discloses a microelectromechanical device (and a method for making it) comprising:

at least one flexible member formed from an alloy comprising: a noble metal and alloying elements comprising gold and nickel (paragraph [0043]).

Since the device is formed from the same materials as the instant invention, the same properties of performance characteristic, electrical conductivity, solid solubility and amount of precipitates are expected.

Claims 1,3-11, 25-27, 29, 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golecki et al (US 2001/0049193 A1).

The discussion of Golecki from above is repeated here.

As to claim 32, Golecki does not explicitly disclose to deposit a sacrificial layer. However, sacrificial layers are conventionally used in MEMS processing. It would have been obvious to one with ordinary skill in the art to deposit a sacrificial layer in the method of Golecki because it is a conventional technique in MEMS processing.

As to claims 33-36, Golecki discloses to use sputtering (paragraph [0054]) and to deposit a chromium adhesion layer (Fig. 7).

#### ***Allowable Subject Matter***

Claims 12-21, 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 22-24 and 30 are allowed.

#### ***Response to Amendment***

The rejections over Sun, Hill, Pearson, Khandros and Sayama are withdrawn. Applicant's remarks are persuasive in that Sun, Hill, Pearson, Khandros and Sayama do not suggest the particular combination of alloy cited in claim 1, with the cited equilibrium solid solubility and performance characteristic. Further as to claims 22 and 23, Sayama and Sun do not suggest the particular alloy cited in combination with the cited performance characteristic.

#### ***Response to Arguments***

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Applicant's arguments filed August 16, 2004 have been fully considered but they are not persuasive. As to the Golecki rejection, applicant argues that Golecki does not teach or suggest a freestanding flexible member made from the alloy. Examiner disagrees since the figures clearly show freestanding structures ("movable structures"). To the extent that applicant is arguing that the freestanding structure of Golecki is made from materials other than the alloy, this argument is not commensurate in scope with the claim language. The claim has open "comprising" language. Therefore, the freestanding structure can be made from not only the alloy, but from other materials as well. The rejection would be overcome by citing that the freestanding structure consists of or consists essentially of the alloy.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita K Alanko whose telephone number is 571-272-1458. The examiner can normally be reached on Mon-Fri until 2:30 pm (Wed until 11:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine Norton can be reached on 571-272-1465. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Anita K. Alanko*  
Anita K Alanko  
Primary Examiner  
Art Unit 1765